

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**MICHAEL RAY SWANSON,**

Plaintiff,

v.

No. 3:18-cv-02148-JR

OPINION AND ORDER

**UNITED STATES, U.S. ATTORNEY  
GENERAL, DEPT. OF VETERANS  
AFFAIRS, AGENCY FOR TOXIC  
SUBSTANCES AND DISEASE REGISTRY,  
and DEPT. OF VETERANS  
AFFAIRS OREGON REGIONAL OFFICE,**

Defendants.

**MOSMAN, J.,**

On May 7, 2019, Magistrate Judge Jolie A. Russo issued her Findings and Recommendation (F&R) [19], recommending that Defendants U.S. Attorney General's, Department of Veterans Affairs', Agency for Toxic Substances' and Disease Registry's, and Department of Veterans Affairs Oregon Regional Office's Motion to Dismiss [14] should be GRANTED and those defendants should be dismissed from this action. Plaintiff filed Objections [21] and the moving defendants filed a Response [22].

**DISCUSSION**

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or

recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

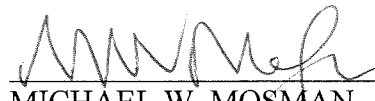
Judge Russo concluded that Plaintiff's FTCA claim may only proceed against the United States and therefore found that all other defendants should be dismissed. Plaintiff objects, arguing that pro se plaintiffs' pleadings should be construed leniently. Pl.'s Objs. [22] at 1, 5. As Judge Russo correctly pointed out in the F&R, the United States is the only proper defendant in an action brought under the FTCA. F&R [19] at 2; *see FDIC v. Craft*, 157 F.3d 697, 706 (9th Cir. 1998). Therefore, I agree with Judge Russo's conclusion that Plaintiff's FTCA claim should only proceed against the United States.

### CONCLUSION

Upon review, I agree with Judge Russo's recommendation and I ADOPT the F&R [19] as my own opinion. Defendants U.S. Attorney General, Department of Veterans Affairs, Agency for Toxic Substances and Disease Registry, and Department of Veterans Affairs Oregon Regional Office are DISMISSED from this action.

IT IS SO ORDERED.

DATED this 5<sup>th</sup> day of July, 2019.

  
MICHAEL W. MOSMAN  
Chief United States District Judge